

## EXTENDING RIGHTS OF PROSPECTORS FOR MINERALS.

S. B. No. 357.]

CHAPTER 83.

An Act to amend Chapter 173 of the Regular Session of the Thirty-third Legislature approved April 9, 1913, relating to the prospecting for and the development of the minerals and other substances in the public land, public islands and public waters and river beds and channels owned by the State, and in the unsold land belonging to the public free school fund, the University fund and the several asylums fund and in such of said land as has heretofore been sold or may hereafter be sold with the reservation of the minerals and other substances therein to the fund to which the land belongs; providing the royalty and other sums and compensation to be paid to the State and owners of the surface, and appropriating the proceeds to certain funds; providing for ingress and egress; providing one may pay cash for mineral claims, and obtain patents and change former claims to rights under this Act; providing for the adoption of rules and regulations by the Commissioner of the General Land Office, repealing the remaining portion of this said Chapter 173 which may not be amended and all other statutes in conflict with this Act, and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. All of Chapter 173 of the Regular Session of the Thirty-third Legislature approved April 9, 1913, shall be so amended as to hereafter reads as follows;

Section 1. All public school, University and Asylum land and other public lands, fresh water lakes, river beds and channels, islands, bays, marshes, reefs and salt water lakes belonging to the State and all lands which may hereafter be so owned and all of said lands which have heretofore been sold or disposed of by the State or by its authority with a reservation of minerals or mineral rights therein as well as all lands which may hereafter be sold with the reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to the prospecting for and the development of the minerals and substances known as gold, silver, cinnabar, lead, tin, copper, zinc, platinum, radio-active minerals, tungsten, ores of aluminum, coal, lignite, iron ore, kaolin, fire clays, barite, marble, petroleum, natural gas, gypsum, nitrates, asbestos, marls, salt, onyx, turquois, mica, guano, bismuth and bismuth bearing minerals, asphalt, potash compounds, sulphur, graphite, magnesia, fuller's earth and molybdenum and molybdenum bearing minerals upon the terms and conditions provided in this Act.

SECTION 2. Any person or association of persons, corporate or otherwise, being a citizen of the United States or having declared an intention of becoming such, desiring to obtain the right to prospect for and develop the minerals and substances named above that may be in any of the areas, included herein may do so under the provisions of this Act together with such rules and regulations as may be adopted by the Commissioner of the General Land Office relative thereto and necessary for the execution of the purposes of this Act.

SECTION 3. One desiring to obtain the right to prospect for and develop petroleum oil and natural gas that may be in any of the sur-

veyed areas included herein shall file with the county clerk an application in writing giving a designation of same sufficient to identify it. The county clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections or that equivalent eligible to be embraced in one permit such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum.

SECTION 4. One desiring to obtain the right to prospect for and develop petroleum and natural gas in any of the State's unsurveyed areas named in this Act shall file with the county surveyor an application in writing for each area applied for, giving a designation of same sufficient to identify it, but such area shall not exceed 2560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application.

SECTION 5. When the Commissioner receives an application that was filed with the county clerk or an application that was filed with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for and a sworn statement by the applicant showing what interest he has in other permit, lease or patent issued under this Act and in good standing, he shall file same, and if upon examination the application or the application and field notes are found correct and the area applied for is within the provisions of this Act the Commission shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years.

SECTION 6. Before the expiration of six months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area and if petroleum or natural gas is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of one year from the date of the permit, file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the first six months aforesaid and that a bona fide effort to develop the said area was made during the six months preceding the filing of the statement and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file the statement herein provided for within the time specified or the filing of a statement untrue or false in material matters shall subject the permit to forfeiture and the termination of the rights of the owner. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided, such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor.

SECTION 7. If at any time within the life of a permit one should develop petroleum or natural gas in commercial quantities the owner or manager shall file in the General Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease the area included in the permit upon the following conditions:

1. An application and a first payment of two dollars per acre for a lease of the area included in the permit shall be made to the Commissioner of the General Land Office within thirty days after the discovery of petroleum or natural gas in commercial quantities:

2. Upon the payment of two dollars per acre for each acre in the permit a lease shall be issued for a term of ten years or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and annually after the expiration of the first year after the date of the lease the sum of two dollars per acre shall be paid during the life of the lease, and in addition thereto the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises.

3. The royalties shall be paid to the State through the Commissioner of the General Land Office at Austin, monthly during the life of the lease. All payments shall be accompanied by the sworn statement of the owner or manager or other authorized agent showing the amount produced since the last report and the market value of the output and a copy of all pipe line receipts, tank receipts, gauge of all tanks into which petroleum may have been run, or other checks and memoranda of amount put out or into pipe lines or tanks or pools. The books and accounts, the receipts and discharges of all pipe lines, tanks and pools and gas lines and gas pipes and all other matters pertaining to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other person authorized by the Governor or Attorney General to represent the State. The Value of any unpaid royalty and any sum due the State under this Act upon any lease shall become as prior lien upon all production produced upon the leased areas and the improvements situated thereon to secure the payment of any royalty and any sum due the State arising under the operation of any portion of this Act.

4. The permit or lease shall contain the terms upon which it is issued including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the commissioner may deem important to the rights of the applicant or the State.

SECTION 8. In the event the surface of an area included within the operations of this Act has heretofore been or may hereafter be acquired by one prior to the filing of an application under the provisions herein such area shall nevertheless be subject to prospect and lease as provided herein but the owner of the permit or lease shall pay to the owner of the surface annually in advance during the life

of the permit or lease, ten cents per acre and the sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface.

SECTION 9. Every person or association of persons, corporate or otherwise, applying for a permit, lease or patent shall file with the application a sworn statement showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement.

*Coal and Lignite.*

SECTION 10. Any person, association of persons, corporate or otherwise, that may desire to acquire the right to prospect for and mine coal, lignite or sulphur may do so by complying with the following conditions, namely:

1. Post up a notice to the effect that the applicant has located a coal, lignite or sulphur mine, stating the area desired not to exceed 2560 acres or four sections of 640 acres each, more or less, and give the approximate courses and the approximate distances that the lines shall extend from the point at which the notice is posted and date the notice.

2. Within thirty days after the date of such posting the applicant shall file an application for a survey of the claim and accompany it with one dollar as a filing fee. The application shall state when the claim was first posted; provided, if an applicant files on whole tracts or upon eighty acres or multiples thereof of surveyed land the application shall be filed in the office of the clerk of the proper county with one dollar as a filing fee and after being recorded by the clerk shall be filed in the General Land Office without field notes within thirty days after being filed with the county clerk and accompanied with one dollar as filing fee.

3. Within ninety days from the filing of the application the surveyor shall survey the area in substantial compliance with the posted notice, record the field notes and make a plat of the survey. The application, field notes and plat shall be filed in the General Land Office within one hundred days after the application was filed with the surveyor, accompanied by one dollar as a filing fee and ten cents per acre for each acre included within the area embraced in the field notes or in the application if no field notes are required, and accompanied by a sworn statement by the applicant showing what interest he has in any other permit, lease or patent issued under this Act and in good standing.

SECTION 11. The application and survey shall not differ so materially from the original posted notice as to defeat the rights of subsequent locators. Lines of previous surveys need not be regarded by an applicant unless he may desire to do so. When the surface is owned by another than the applicant the applicant shall pay to the surface owner ten cents per acre in advance each year during the life of the owner's claim.

SECTION 12. When the conditions imposed relating to coal, lignite and sulphur have been complied with and the application, field notes

and plat have been approved by the Commissioner of the General Land Office, and the area found to be within the provisions hereof, the said Commissioner shall issue to the applicants or his assignee a separate permit for each area, according to the applicant's application, conferring upon the owner an exclusive right to prospect for, develop and put out coal, lignite and sulphur within the designated area for a term not to exceed five years. Before the expiration of one year after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of the area in each permit and if coal lignite or sulphur is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of each year, except the fifth, from the date of the permit, file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the required time and that a bona fide effort to develop the said area was made during each preceding year of the permit and showing what work was done and expenditures incurred and whether or not coal or lignite had been discovered in commercial quantities. If the Commissioner is satisfied that the owner has been diligent and has made a bona fide effort to develop the area such owner shall have the right to prospect the area for another year. Within thirty days after coal, lignite or sulphur has been found in commercial quantities the owner shall apply for a lease of the area included in the permit and such lease may be granted for a term not to exceed ten years with the right of renewal or renewals for the same or a less term. If coal, lignite or sulphur should not be developed in commercial quantities and a lease applied for within five years after the date of the permit the rights of the owner shall terminate and the area be again subject to prospect and development by another than the forfeiting owner. For every ton of coal mined the owner shall pay to the State a royalty of ten cents, and for every ton of lignite mined the owner shall pay to the State a royalty of seven cents, and for every ton of sulphur mined the owner shall pay to the State a royalty of twenty-five cents, said payments to be made monthly through the Commissioner of the General Land Office at Austin and the remittances shall be accompanied by the sworn statement of the owner or manager showing the number of tons mined and to whom sold and the selling price. All the books, accounts, weights and wage contracts, correspondence and other papers in any way pertaining to the operation of any mine under this Act shall be open to the inspection of the Commissioner of the General Land Office or his representative and any other representative of the State appointed by the Governor or Attorney General. All coal and lignite mines shall be kept in reasonably continuous operation, and shall be operated in conformity with rules and regulations prescribed by the State Inspector of Mines and the General Statute relating thereto.

#### *Other Minerals.*

SECTION 13. A mining claim upon any mineral or other substance mentioned in this Act except petroleum, natural gas, coal or lignite

and sulphur shall not exceed eighty acres, and such claim shall be of unlimited depth and bounded by four vertical planes. The locator shall be entitled to all the minerals and substances in the area that are named in this Act except petroleum, natural gas, coal, lignite and sulphur and shall have the exclusive right to prospect for, develop and put out the minerals and substances upon the terms and conditions imposed by the provisions of this Act.

SECTION 14. One desiring to file on any area for any mineral or other substance included within the operation of this Act except petroleum, natural gas, coal, lignite and sulphur shall proceed in the manner provided for under coal, lignite and sulphur and the terms and conditions prescribed therein shall be the procedure and required in all other cases except for petroleum and natural gas. The length of no claim nor combination of claims shall exceed twice the width. If an area applied for in one application is composed of two or more tracts of not more than eighty acres each nor more than five tracts all of such areas shall be contiguous. When one has obtained five claims eligible to be embraced in one permit such applicant shall not obtain any more claims within one mile thereof, but if one obtains less than five claims eligible to be embraced in one permit such one may obtain such additional area within one mile of the other as will equal five full claims of eighty acres each.

SECTION 15. When the application, field notes and plat have been filed in the General Land Office together with a sworn statement by the applicant showing what interest he had in any other permit, lease or patent issued under this Act and still in good standing, and the papers have been approved by the Commissioner, the applicant or his assignee shall be entitled to the right to prospect for, develop and put out all the minerals and substances named in this Act that may be found in the area, except petroleum, natural gas, coal, lignite and sulphur for a period of five years and upon the terms and conditions provided herein, and as evidence of such right, the Commissioner shall issue to the applicant or his assignee a permit for the term of five years upon the same terms, conditions and requirements that are provided for permits for coal, lignite and sulphur so far as applicable. And leases shall be applied for and issued within the five years upon the same terms, conditions and requirements that are provided for leases for coal, lignite and sulphur so far as applicable. In all reports of development work the kind of mineral or other substances found shall be given. So far as applicable every provision and requirement relating to coal, lignite, and sulphur shall apply to the applicant and the State in the matter of other minerals and substances except petroleum and natural gas unless otherwise provided herein. In full payment to the State for the right to take from any mining claim for any mineral or substance included in this Act except petroleum, natural gas, coal, lignite or sulphur, the owner shall pay to the State through the Commissioner of the General Land Office at Austin a royalty equivalent to five percentum of the value of the total gross production sold or disposed of from such mining claim or one hundred dollars per acre as provided in this Act.

*General Provisions.*

SECTION 16. The general provisions in this and the following section shall apply to all the foregoing provisions so far as applicable.

Surveyed land within the meaning of this Act shall include all tracts for which there are approved field notes on file in the General Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this Act include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated or with the clerk of the county to which such county may be attached for judicial purposes and accompanied by one dollar filing fee, and it shall be filed in the General Land Office within thirty days after it was filed with the county clerk and accompanied by one dollar filing fee.

All applications for unsurveyed areas shall be filed with the county surveyor, or his deputy, of the county in which the area or a part thereof is situated, accompanied by one dollar filing fee, but if such county has no surveyor then the application shall be filed with the clerk of the proper county and by him recorded in the surveyor's records, and in that event the area may be surveyed by the surveyor of the nearest county as now provided by law. The area shall be surveyed within ninety days and the application, field notes and plat shall be filed in the General Land Office, accompanied by a filing fee of one dollar, within one hundred days after the date of the filing of the application.

The payment per acre required to be made before the issuance of a permit shall be paid annually thereafter during the life of the permit or lease.

A separate written application shall be made for the area desired in a permit. No permit, lease or patent shall embrace the area in two or more applications.

No application, permit, lease or patent shall embrace a divided area.

Whole tracts of surveyed land may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

A duplicate of every permit and lease shall be kept in the General Land Office.

The area in each permit shall be developed independently of other areas.

When one desires a lease or patent any one or more whole tracts in the permit may be abandoned by relinquishment filed in the General Land Office as herein provided and thereupon obtain a lease or patent upon the remaining area; provided such remaining areas is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the General Land Office accompanied by one

dollar filing fee. The Commissioner of the General Land Office shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through due course of mail to reach said clerk the area shall be subject to applications as in the first instance.

SECTION 17. The proceeds arising from activities under this Act which affects land belonging to the public free school fund, the permanent University fund and the permanent fund of the several asylums shall be credited to the permanent fund of said institutions and the proceeds arising from the activities affecting other areas shall be credited to the Game, Fish and Oyster fund.

SECTION 18. The owner of a file or permit or lease under any provision of this Act may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated or in the county to which such county may be attached for judicial purposes and same shall be filed in the general Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar, and if not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable; provided further, a sublease contract need not be filed in the General Land Office.

SECTION 19. If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or should the owner of a permit fail or refuse to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or should the owner of a permit fail or refuse to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to proceed in good faith and with reasonable diligence and in a bona fide effort to develop, operate and put out the mineral or other substance at any time during the life of the lease, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments or fail or refuse to make the proper statement, or fail to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do the permit or lease, as the case may be, shall be subject to forfeiture, and when the Commissioner is sufficiently informed of the facts which subject the permit or lease to forfeiture he may declare same forfeited by proper entry upon the duplicate permit or lease kept in the General Land Office. When forfeiture has been declared a notice of that fact shall be mailed to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells, and



provided further, that all forfeitures may, within the discretion of the Commissioner be set aside and all rights reinstated before the rights of another intervene.

SECTION 20. An owner of any claim for any mineral or substance included in this Act may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this Act, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress to and from the area embraced in the file, permit, lease or patent. Ten cents per acre shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent.

SECTION 21. Neither the filing of an application under any provision of this Act nor the issuance of a permit or lease on any of the unsold land included herein shall prevent the sale of the surface without the minerals and in case of such sale subsequent to the posting of any notice or the filing of an application the purchaser shall not be entitled to the ten cents per acre that is provided for owners of the surface at the time of filing nor shall such owner be entitled to any damages that may be occasioned by the working of any area.

SECTION 22. All development in water or on islands, marshes, reefs or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner of the General Land office may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a claim, location, file, permit or lease or patent for a failure or refusal of the owner to comply with such rules and regulations as may be adopted.

SECTION 23. Should any mineral or substance within the provisions of this Act, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked for the minerals and substances embraced in such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such mineral or other substance by complying with the provisions of this Act relating to the mineral or substance so discovered but shall not be required to pay either of the additional ten cents per acre to the State or the owner of the surface, and the remaining portion of said area shall be subject to the application of others in the same manner as if there were no pre-existing file thereon.

SECTION 24. If the owner of a claim upon any mineral or other substance named in this Act, other than petroleum and natural gas which has been acquired under any previous statute, should desire to accept the provisions of this Act and operate hereunder he may do so by filing a declaration to that effect in the General Land Office together with the payment required in the particular instance and ob-

tain a permit or lease by complying with the provisions hereof relating thereto. The rights under such acceptance shall begin from the date the declaration is filed and the owner shall have the same rights thereafter as is accorded those who make original filings under this Act.

SECTION 25. At any time during the life of a permit but prior to accepting a lease upon any area for any mineral or other substance included within the provisions of this Act, except petroleum and natural gas, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain, under the rules governing the issuance of patents to land, a patent for all the minerals that may be in such area except petroleum and natural gas in lieu of the payment of the royalty as provided in this Act; provided, however, one shall pay the prescribed royalty on all minerals and substances put out and disposed of while developing the area prior to obtaining a lease or patent.

SECTION 26. The Commissioner of the General Land Office shall have the general supervision of all matters necessary for the proper administration of this Act and he is authorized to adopt rules and regulations and to alter or amend them from time to time as he may deem necessary for the protection of the interests involved and not inconsistent with the provisions herein.

SECTION 27. Rights acquired under this Act shall be subject to taxation as is other property.

SECTION 28. Chapter 173 approved April 9, 1913, and all other laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 29. The fact that portions of the mineral statute are so incongruous and difficult of interpretation as to be almost inoperative and the fact that a law clear in its terms and ample to secure the development of the State's mineral wealth is badly needed and the near approach to the close of the session creates an emergency and an imperative public necessity exists that the constitutional rule which requires bills to be read on three several days in each house be suspended and that this take effect from and after its passage and it is so enacted.

Approved March 16, 1917.

Takes effect 90 days after adjournment.